87-149

JUL 24 1987

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

PETER S. NIEDZWIECKI,
PETITIONER

versus

CITY OF BRIDGEPORT,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF CONNECTICUT

PETITION FOR CERTIORARI

PETER S. NIEDZWIECKI
PETITIONER, PRO-SE
231 WEST AVENUE
BRIDGEPORT, CT 06604
(203) 336-4075

I. QUESTIONS PRESENTED

1. Whether the Court was correct in entering a Judgment of Strict Foreclosure after opening of original judgment rather than setting the proceedings aside in accordance with Connecticut General Statute Section 12-187?

2. Whether the Court was correct in allowing the entry of a Default for Failure to Plead, to stand after Petitioner filed his Motion to Reopen Foreclosure and filed his Bonafide Defense within twenty (20) days of default being entered, by the Court, and well within the four (4) month period of time allowed, by Connecticut General Statute Section 52-212?

3. Whether the Connecticut General Statute Section 12-187 is applicable to the Petitioner's present cause of action?

4. Whether the court violated the Petitioner's civil rights under the rules of the United States Constitution, the 14th Amendment, on behalf of the Respondent?

PARTIES TO THE PROCEEDING BELOW

City of Bridgeport

c/o Michael G. Maronich

Plaintiff's Attorney

180 Fairfield Avenue

Bridgeport, Connecticut 06604

Appellate Court

State of Connecticut

231 Capitol Avenue

Drawer "Z" Station "A"

Hartford, Connecticut 06106

Joseph I. Lieberman

Attorney General

State of Connecticut

Trinity Street

Hartford, Connecticut 06106

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PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

The petition of Peter S. Niedzwiecki respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Superior Court, Judicial District of Fairfield at Bridgeport and the order and opinion of

the State of Connecticut Appellate Court on June 28, 1985 and December 9, 1986 respectively.

OPINION BELOW

The opinion of the Connecticut Appellate Court, released on December 9, 1986 read's as follows:

CITY OF BRIDGEPORT v. PETER NIEDZWIECKI

(4338)

(4339)

DUPONT, C. J., BORDEN and SPALLONE, Js.

Argued December 3 -- decision released December 9, 1986

PER CURIAM. Upon a careful review of the record and briefs, and affording the appropriate scope of review to all of the claims of error raised by the defendant, we find no reason to disturb the judgments of the trial court.

In each case, there is no error.

II. JURISDICTION

The date of the judgments to be reviewed were entered on June 28, 1985.

(1) Judgment of Strict Foreclosure after opening of original judgment (CV-85-221015S) and (2) Judgment of Foreclosure By Sale after opening of original judgment. (CV-85-221016S)

The date of the decision to be reviewed was released by the State of Connecticut Appellate Court on December 9, 1986 case numbers (A.C. 4338 & A.C. 4339)

On May 18, 1987, Justice Marshall signed and issued an order extending the time to file petition for writ of certiorari to and including July 24, 1987.

The jurisdiction of this court is invoked under title 28, United States Code, Section 1247 (3).

III. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

". . .Nor shall any person be deprived of life, liberty, or property, without due process of law."

United States Constitution, Amendment XIV:

". . .Due process of law, the right to a fair trial."

CONNECTICUT GENERAL STATUTE IN QUESTION

CONNECTICUT GENERAL STATUTE SECTION 12-187 IS APPLICABLE TO THE DEFENDANT'S DEFENSE.

Connecticut general Statute Section 12-187 reads as follows:

> The owner of or any person having an interest in or encumbrance on any piece of property may, at any time at least three months before the last day of the redemption period, file in the office of the clerk of said court a bona fide defense, verified under oathe, in duplicate, to the proceeding in respect to such property, identifying the same by its serial number, and if the court is satisfied that the defense stated is a bonafide defense, it shall direct the clerk to write opposite the description of the property in the list of the word "withdrawn," and thereafter such property shall not be within the scope of the proceeding.

STATEMENT OF THE CASE

The Plaintiff commenced the present suit by summons and complaint in an action returnable to the Superior Court on January 15, 1985. This is an action for the foreclosure of tax liens commencing on the Grand List of October 1, 1980 and is brought pursuant to Connecticut General Statute section 12-181. The subject real property consists of a three story, wood frame, three family house situated on a lot measuring approximately thirty seven feet by eighty feet.

The Petitioner initially appeared pro se and subsequently by counsel. (See Appearance dated February 26, 1985.) On February 11, 1985 the Plaintiff filed a motion for default for failure to plead which was subsequently granted by the Court on March 22, 1985. (See Motion For Default dated February 11, 1985.) At

that same time the Court entered, by agreement of the parties, a judgment of strict foreclosure with law days set to commence July 30, 1985. (See Judgment of Foreclosure By Sale dated March 22, 1985.) At the time the original judgment was entered the Petitioner, Peter Niedzwiecki, was represented by counsel.

Thereafter the Petitioner, pro se, filed a "Motion To Reopen Judgment of Strict Foreclosure and Extend Law Day" dated April 11, 1985. In his motion the Petitioner requested of the Court that "the Judgment of Strict Foreclosure be re-opened and the law day extended until December 31, 1986..." (See Motion To Reopen Foreclosure By Sale Judgment And Extend Law Day dated April 11, 1985, p. 2.)

On June 28, 1985, after first granting a motion to withdraw appearance filed by Petitioner's counsel, the Court

heard the Petitioner's motion. The Court granted the Petitioner's Motion to reopen the judgment but extended and reset the law days to commence September 3, 1985 instead of the Petitioner's request date of December 31, 1986. (See Judgment of Strict Foreclosure After Opening of Original Judgment dated June 28, 1985.)

On July 18, 1985 the Petitioner filed the present appeal claiming that in addition to its refusal to extend the sale date to the extent requested by the Petitioner, and Court also prevented the Petitioner from filing a defense.

On December 9, 1986 the Appellate Court issued a decision stating that there was no error on behalf of the lower court. However, to date, a detailed decision has not been released by the Appellate Court.

On December 19, 1986 a motion to reargue was filed by the Petitioner.

On January 8, 1987 the Petitioner's motion to reargue was denied by the Appellate Court.

On January 28, 1987 a petition for certification by the Supreme Court was filed by the Petitioner.

On February 24, 1987 the Petitioner's petition for certification was denied by the State Supreme Court.

On March 2, 1987 a Motion For Stay of Execution of Judgment was filed by the Petitioner.

On April 2, 1987 the Petitioner's Motion For Stay of Execution of Judgment was granted by the State of Connecticut, Appellate Court.

STATEMENT OF FACTS

I. The Respondent did connect a storm sewer drain directly to the main

sewer line causing the main sewer line to fill up and backup into the house during rainstorms and when the tide is high because floodgates are not attached to the piping leading from the storm sewer to Long Island Sound.

II. In August of 1983 the Respondent did replace and install a 12" diameter main sewer line on Clinton Avenue with a 24" diameter sewer line aggravating the old situation by doubling the back pressure into the house and pushing the waste back up through the toilets of the third floor.

III. On April 12th of 1984, Jose Santiago quit possession of said property because of the problem of the waste backing up into the house.

IV. After buying back the property on April 12th of 1984, petitioner had the

sewer line from the house to the main line snaked out a number of times with negative results. Petitioner contacted the City and petitioner requested that they dig up the main line and correct the problem. They told petitioner that petitioner had to dig up the main sewer line himself. Petitioner did and after much trouble and expense discovered the problem was the storm drain. The Respondent refuses to correct the problem.

V. When Mr. Santiago owned the property, as an employee of C.R.S. Garbage Removal, he received a free garbage container as a fringe benefit, therefore saving the Respondent the trouble of picking up the garbage for over two years.

VI. When petitioner took over the property on April 12th of 1984, the Respondent refused to pick up the garbage

and let it build up on the sidewalks 5 feet high by 20 feet long. When the tenants would flag down the garbage truck and ask the driver to pick up the garbage he would reply that petitioner's house was not one of his stops. Petitioner contacted City Hall on numerous occasions but because of the union contract the Mayor could not order the garbage men to pick up the garbage if there are floor sweepings in the garbage and therefore petitioner had to hire trucks and take the garbage to the dump himself at much personal expense and hard work from April 12, 1984 thru September 4th of 1984.

VII. As a result of the sewer and garbage problem we then developed a rat problem. In August of 1984 the tenants refused to pay the rent because of the sewerage and garbage problems created by the Respondent and in September of 1984

all of the tenants moved out. Without any rent money, petitioner has no way of paying the taxes.

VIII. The Respondent has also been unfair to petitioner by taxing petitioner at the full mill rate on a house that they had condemned and were well aware of the fact that it had not generated any income since January of 1980. When petitioner requested the tax assessor lower the tax rate on the condemned house, he stated that if he did that then he would double the taxes on the house that petitioner had redeveloped.

LAW AND ARGUMENT

On June 28, 1985, Judge Spear erred by not recognizing the filing of a bonafide defense by the Petitioner and by not withdrawing the case from the scope of the proceeding.

Petitioner was prejudiced by the court by not being allowed to display and explain his visual aid.

The court was not correct in foreclosing on Petitioner's property and did ignore Petitioner's legitimate arguments.

The Petitioner's rights were violated by the court under the United States Constitution The 14th Amendment, Due Process of Law, the Right to a Fair Trial.

The Respondent did refuse to maintain and repair the sewerage system, and to pick up the garbage of the Petitioner's tenants and did harass and intimidate the petitioner with the threat of arrest therefore causing the petitioner to spend thousands of dollars unnecessarily and forcing the

Petitioner's tenants to move by creating a sanitary problem that should not have occurred therefore causing a loss of rental income to the petitioner that could have been well applied to the remodeling of the building and to the city property taxes rather than to be totally lost because the city wanted to display their power and show the new landlord who the boss is to satisfy the petty politicians ego's.

In the interim, progress in the remodeling, rebuilding, repair and maintenance were lost because the city kept the landlord busy digging ten foot deep holes in the street, delivering garbage to the dump and killing rats.

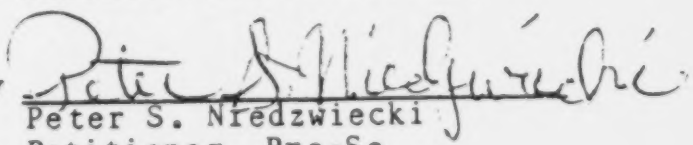
Further on November 25, 1985 Robert C. Kalm, the City Engineer, in the process of addressing the Common Council, of the Respondent, publicly admitted,

that the backing up of sewerage, in the Petitioner's house, was caused by the city's antiquated sewerage system and also the lack of the city constructing much needed tidal gates. See copy of newspaper clipping dated November 26, 1985 in Appendix No. 17.

IV. CONCLUSION

For the reasons set out herein, this Honorable Court should and ought to issue it's Writ of Certiorari to review the judgments of the Superior Court, Judicial District of Fairfield at Bridgeport and the order and opinion of the State of Connecticut Appellate Court.

RESPECTFULLY SUBMITTED,

by 

Peter S. Niedzwiecki
Petitioner, Pro-Se
231 West Avenue
Bridgeport, Connecticut 06604
(203) 336-4075

July 23, 1987
At: Bridgeport, Connecticut

APPENDIX

No. CV-85-221015s	:	SUPERIOR COURT
CITY OF BRIDGEPORT	:	JUDICIAL DISTRICT OF FAIRFIELD
Vs.	:	AT BRIDGEPORT
PETER NIEDZWIECKI	:	JUNE 28, 1985

NOTICE OF JUDGMENT

Notice is hereby given that a judgment of Strict Foreclosure has been entered by the Court in the above captioned matter. Pursuant to the terms of that Judgment, unless the Defendant, owner of the equity, Peter Niedzwiecki, pays the sum of $7,581.98 together with interest plus costs of $655.10, plus attorney's fees of $950.00 on or before September 3, 1985 he shall be foreclosed of any and all right and title in and to the premises known as 19-21 Clinton Ave., Bridgeport, CT. If Peter Niedzwiecki fails to redeem, title shall vest in the Plaintiff on September 4, 1985.

THE PLAINTIFF
CITY OF BRIDGEPORT

by _____
Michael G. Maronich
Acting Assistant City Tax
Attorney

CERTIFICATION

The undersigned hereby certifies that a copy of the foregoing has been mailed, postage prepaid, on the date first mentioned above to all counsel of record and to Peter Niedzwiecki, 231 West Avenue, Bridgeport, CT.

_____
Michael G. Maronich

No. CV-85-221015s : SUPERIOR COURT

CITY OF BRIDGEPORT : JUDICIAL DISTRICT OF FAIRFIELD

Vs. : AT BRIDGEPORT

PETER NIEDZWIECKI
231 West Avenue
Bridgeport, CT : JUNE 28, 1985

Present: Hon. Eugene E. Spear, Judge

JUDGEMENT OF STRICT FORECLOSURE
AFTER OPENING OF ORIGINAL JUDGMENT

This action, by writ and complaint claiming a foreclosure of tax liens on a certain piece or parcel of land, situated in the City of Bridgeport and described as follows:

All that certain piece or parcel of land, together with the buildings and improvements thereon standing, situated in the City of Bridgeport, County of Fairfield and State of Connecticut and being bounded and described as follows:

Northerly: on land formerly of J.&E. Kralic, et al, 132.90 feet, more or less;

Easterly: on Clinton Avenue, 42.78 feet, more or less;

Southerly: on land formerly of Frank Miranti,, 132.96 feet, more or less;

Westerly: on land now or formerly of Crown Grocery Stores, 40 feet, more or less.

Said premises being also known as 19-21 Clinton Ave. and possession of the premises and other relief, came to this

Court on January 15, 1985 and thence to a later time when a judgment of strict foreclosure was duly entered as appears on file, and thence to a later time when the Defendant Peter Niedzwiecki, pro se, moved to reopen the judgment to extend the law day, and thence to the present time when the parties were heard on the Defendant's motion.

The Court, having heard the interested parties, finds that the motion should be and it is hereby granted, and that the sum of $7,581.98 is due the Plaintiff on its debt, plus costs of $655.10 which includes an appraisal fee of $250.00 and a title search fee of $100.00, plus attorney's fees of $950.00.

Whereupon it is adjudged that unless the Defendant Peter Niedzwiecki on or before September 3, 1985 shall pay the Plaintiff these sums with interest from the date hereof together with the costs

of this suit then the Defendant Peter Niedzwiecki his heirs, successors and assigns shall be forever barred and foreclosed of all equity to redeem the premises above described.

Any further, that upon the payment of these sums, interest and cost by any defendant, after all subsequent parties in interest have been foreclosed, the title to the premises shall vest absolutely in the defendant making such payment, subject to such unpaid encumbrances, if any, as precede the interest of the redeeming defendant.

And further, that the defendants, and all persons claiming possession of the premises through any of the defendants under any conveyance or instrument executed or recorded subsequent to the date of the recording of the lis pendens or whose interest shall have been thereafter obtained by descent or

otherwise, deliver upon possession of the premises to the plaintiff or the defendant redeeming in accordance with this decree, with stay of execution of ejectment in favor of the redeeming defendant until one day after the time herein limited to reedeem, and if all the parties fail to redeem, then until September 4, 1985.

By the Clerk

_____
Assistant Clerk

No. CV-85-221015s	:	SUPERIOR COURT
CITY OF BRIDGEPORT 45 Lyon Terrace Bridgeport, CT	:	JUDICIAL DISTRICT OF FAIRFIELD
Vs.	:	AT BRIDGEPORT
PETER NIEDZWIECKI 231 West Avenue Bridgeport, CT	:	JUNE 28, 1985

Present: Hon. Eugene E. Spear, Judge

JUDGMENT OF FORECLOSURE BY SALE
AFTER OPENING OF ORIGINAL JUDGMENT

This action, by writ and complaint claiming a foreclosure of tax liens on a certain piece or parcel of land, situated in the City of Bridgeport and described as follows:

All that certain piece or parcel of land, together with the buildings and improvements thereon standing, situated in the City of Bridgeport, County of Fairfield and State of Connecticut and being bounded and described as follows:

Northerly: on land formerly of J. Bulbis, now or formerly of Frank Miranti, 80 feet, more or less;

Easterly: on Clinton Avenue, 37.2 feet, more or less;

Southerly: on land formerly of L. Mooney, now or formerly of Samuel Wind, 79.8 feet, more or less;

Westerly: on land now or formerly of J. Abromaytis, 37.22 feet, more or less.

Said premises being also known as 11-13 Clinton Ave. and possession of the premises and other relief, came to this

Court on January 15, 1985, and thence to a later time when a judgment of foreclosure by sale was entered as appears on file, and thence to a later time when the Defendant Peter Niedzwiecki, pro se, moved to reopen the judgment to extend the sale date, and thence to the present time when the parties were heard on the Defendant's motion.

The Court having heard the Plaintiff finds that the allegations of the complaint are true and that the sum of $9,276.01 is due the Plaintiff, plus costs of $655.10 which includes an appraisal fee of $250.00 and a title search fee of $100.00, plus attorney's fees of $1,050.00.

Upon motion of the Court a foreclosure by sale is decreed.

Whereupon, it is adjudged that Attorney Barbara G. Lifton of 1115 Main Street, Bridgeport, Connecticut, is

appointed as a Committee to sell the premises above described; that she shall sell the same as a whole, subject to the approval of the Court, free and clear of the tax liens being foreclosed and of all claims subsequent in right thereto the holders of which are bound by this action, subject to any and all liens either choate or inchoate of any nature affecting said premises at public auction, on the premises on September 7, 1985 at 12 o'clock noon, inspection from 11:00 A.M. to 12 o'clock noon, unless, at or before that time, the sum above found to be due upon the debt, with interest from the date of this judgment together with costs and attorney's fees as mentioned above, such expenses for advertising and for the services of the Committee as may have been incurred at the date of such payment, and the cost of the appraisal hereinafter directed, if

previously made and returned, all as taxed by the clerk, be paid to the Plaintiff, in which case the sale shall not take place;

that the Committee shall advertise such sale in the Bridgeport Post on August 17, 1985, August 24, 1985 and August 31, 1985 and by erecting a sign on the premises on or before August 3, 1985; that the Committee may obtain liability insurance protection for the premises for the day of the sale; that the purchaser, unless it be the Plantiff, shall deposit with the Committee at the time of the sale $3,400.00 cash, certified check or bank check, the balance to be paid within 30 days after the approval of the sale by the Court upon tender of the deed, and that the deposit be forfeited if the purchaser shall default in completing the transaction; that when such sale shall have been made the Committee shall

execute and submit for the approval of this Court a conveyance of the premises to the purchaser, and make a return of his doings and bring the proceeds of the sale into Court; that Barry Rosa of 30 Rocky Hill Road, Trumbull, CT, Attorney Mary Claire Collier of 2580 Main Street, Stratford, CT and Attorney Carmen L. Lopez of 239 Golden Hill Street, Bridgeport, CT, disinterested persons, are appointed to appraise the property under oath and make return of their appraisal to the Clerk of this Court on or before August 29, 1985; and that the Plaintiff shall be allowed his costs, including the expenses of the sale and appraisal, to be taxed and paid out of the proceeds of the sale and if the Plaintiff is the purchaser at the sale he shall pay to the Committee only the expenses of the sale or so much of the proceeds as exceeds his judgment,

interest, attorney's fees and costs, which ever is the greater; and further the Committee is ordered to take no action or incur no expense prior to July 24, 1985.

DECISION OF APPELLATE COURT

CITY OF BRIDGEPORT v. PETER NIEDZWIECKI

(4338)

(4339)

DUPONT, C. J., BORDEN and SPALLONE, Js.

Argued December 3 -- decision released December 9, 1986

PER CURIAM. Upon a careful review of the record and briefs, and affording the appropriate scope of review to all of the claims of error raised by the defendant, we find no reason to disturb the judgments of the trial court.

In each case, there is no error.

STATE OF CONNECTICUT
APPELLATE COURT

No. A.C. 4339
No. A.C. 4338

CITY OF BRIDGEPORT

VS

PETER NIEDZWIECKI : JANUARY 8, 1987

O R D E R

THE MOTON OF THE DEFENDANT, FILED DECEMBER 19, 1986, TO REARGUE, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY O R D E R E D DENIED.

BY THE COURT,

ASSISTANT CLERK-APPELLATE

NOTICE SENT: 1-9-87
PETER S. NIEDZWIECKI, pro se
MICHAEL G. MARONICH
HON. EUGENE E. SPEAR
CLERK, SUPERIOR COURT, FAIRFIELD
CV85-221015S

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-86-1078
NO. PSC-86-1077

City of Bridgeport

v.

Peter Niedzwiecki

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certfication to appeal from the Appellate Court (9 Conn. App. 807) it is hereby ordered that said petition be, and the same hereby is denied.

BY THE COURT,

Assistant Clerk-Appellate

Dated: February 24, 1987

Notice to: 2/24/87
Clerk, Superior Court, Fairfield--221015
Clerk, Appellate Court
Peter S. Niedzwiecki, pro se
Michael G. Maronich

Peter Niedzwiecki in support of petition.

STATE OF CONNECTICUT
APPELLATE COURT

No. A.C. 4339
No. A.C. 4338

CITY OF BRIDGEPORT

VS

PETER NIEDZWIECKI : APRIL 2, 1987

O R D E R

THE MOTION OF THE DEFENDANT, FILED MARCH 2, 1987, FOR A STAY OF EXECUTION OF JUDGMENT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D GRANTED UNTIL EXPIRATION OF THE TIME TO PETITION TO THE UNITED STATES SUPREME COURT OR, IF A PETITION IS FILED, UNTIL THAT COURT HAS TAKEN ACTION IN THIS CASE, EITHER BY A DENIAL OF THE PETITION FOR CERTIORARI OR, IF APPLICABLE, BY A DECSION ON THE MERITS OF THE APPEAL.

BY THE COURT

ASSISTANT CLERK-APPELLATE

NOTICE SENT: 4-3-87
PETER S. NIEDZWIECKI, pro se
MICHAEL G. MARONICH, ESQ.
CLERK, SUPERIOR COURT, FAIRFIELD
CV85-221015S
BARBARA LIFTON

ldc

November 26, 1985

Council briefed on sewer problems.

Bpt. Sewer Commission (3 wl.)

By ANNA MARIA VIRZI
Telegram staff writer

BRIDGEPORT -- Common Council members were warned Monday that they will hear many constituents complain about sewage problems because of the city's antiquated sewage system.

City Engineer Robert C. Kalm made his remarks at a council orientation session.

Also at the session, City Clerk Thomas Mulligan outlined council procedures and Tax Collector Lawrence Conti stressed that the council shouldn't approve tax abatements without obtaining justification from each property owner.

Kalm said one-third of the city has combined sanitary and storm drainage sewers, which frequently back up during

storms. "The combined system goes back to the turn of the century," he explained.

During heavy rains, combined sewers frequently overflow from street catch basins and sometimes into basements, Kalm said.

Combined sewer systems are generally located south of North Avenue, including the South End, East End, West End and sections of Black Rock, he said.

"A lot of times you will call and there might be a break in the pipes. We can fix that. A lot of times, we can't give you any answer. It's just the line," he said.

In a project that is 95 percent complete, construction of tide gates will help alleviate sewage back-up problems in the city, he said.